

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

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**FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY**

In the Matter of )

Federal-State Joint Board on )  
Universal Service )

CC Docket No. 96-45

To: The Commission )

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**REPLY COMMENTS OF AMERICA ONLINE, INC.**

America Online, Inc. (AOL), by its attorneys, hereby submits these reply comments in the above-referenced proceeding. AOL is pleased at the consensus that has developed around many of the important issues regarding universal service, and is hopeful that the Commission can resolve the remaining points of contention and implement rules that will bring the educational benefits of the Internet within the reach of all Americans. As the nation's largest Internet Online service, AOL believes it is critical that the Commission's implementation of the universal service provisions of the 1996 Act give this nation's schools and libraries the greatest flexibility to obtain services that provide the finest educational benefits to our nation's children.

**I. COMPETITIVE NEUTRALITY AND SOUND PUBLIC POLICY REQUIRE THAT  
ALL ISPS BE ELIGIBLE FOR REIMBURSEMENT FOR INTERNET ACCESS  
SERVICE PROVIDED TO SCHOOLS AND LIBRARIES AT A DISCOUNT**

The Federal-State Joint Board's recommendation to permit all ISPs, not just those affiliated with telecommunications carriers, to be eligible to participate in the discount program for

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schools and libraries drew significant opposition from many telecommunications carriers.<sup>1/</sup> The carriers' arguments draw on two basic themes: statutory interpretation and competitive neutrality. However, neither the statutory language of the 1996 Act nor the additional principle of competitive neutrality restricts the Commission from including an ISP not affiliated with a telecommunications carrier ("Independent ISP") in the universal service discount program for schools and libraries. On the contrary, sound public policy dictates that the Commission give schools and libraries the flexibility to choose from among *all* competitive Internet access providers, and AOL believes that the 1996 Act mandates this.

**A. The 1996 Act Does Not Restrict Participation in the Universal Service Discount Program to Carrier-Affiliated ISPs.**

The carriers point out that Sections 254(c), 254(e), 254(h)(1)(B), and 214(e) all speak only of telecommunications services and telecommunications carrier participation, and conclude that ISPs are statutorily precluded from receiving universal service reimbursements.<sup>2/</sup> However, none of those provisions is relevant to the Joint Board's recommendations regarding Internet access for schools and libraries. The Joint Board explicitly based its recommendations on Section 254(h)(2)(A), which requires the Commission to establish rules to "enhance . . . access to advanced telecommunications and information services" for schools and libraries. This provision specifically refers to "information services," and the legislative history clearly demonstrates that Congress intended to include the services themselves, such as Internet access

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<sup>1/</sup> *Federal-State Joint Board on Universal Service Recommended Decision*, CC Docket No. 96-45, FCC 96J-3 (rel. Nov. 8, 1996) ("Recommended Decision") at ¶ 460. See comments of ALLTEL at 5; Ameritech at 1; ALTS at 17; AT&T at 17-19; Bell Atlantic at 20-21; BellSouth at 27; GTE at 89-91; LCI at 3; MCI at 18; NYNEX at 40; Pacific Telesis at 38-40; SBC at 43; USTA at 34.

<sup>2/</sup> See, e.g., comments of AT&T at 18-20; Pacific Telesis at 38; SBC at 44.

service, within the scope of universal service for schools and libraries.<sup>3/</sup> The provision is a broad universal service mandate; nothing in it restricts the Commission from including non-telecommunications services provided by non-telecommunications carriers within the scope of the discount program.

Some parties claim that the Joint Board made an unjustifiable leap from enhancing access to subsidizing. They argue that the phrase "enhance . . . access" permits the Commission to create discounts for telecommunications services but not for information services.<sup>4/</sup> But this interpretation would read Section 254(h)(2)(A) out of the Act entirely. Section 254(h)(1)(B) already requires the Commission to establish discounts on telecommunications services used for educational purposes; that provision surely encompasses telecommunications services used to connect schools and libraries to ISPs. If that were all Congress meant by "enhance . . . access" to information services, it would not have included Section 254(h)(2)(A). The Joint Board interpreted Section 254(h)(2)(A) reasonably to conclude that giving schools and libraries discounts on Internet access service would indeed "enhance . . . access to advanced telecommunications and information services."

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<sup>3/</sup> See Joint Explanatory Statement, S. Rep. No. 230, 104th Cong., 2d Sess. 133 ("Commission could determine that . . . services that constitute universal service for classrooms and libraries shall include . . . information services which can be carried over the Internet").

<sup>4/</sup> See, e.g., comments of Ameritech at 18-19 ("information services themselves are [not] included in the concept of universal service but rather 'access to' those services -- *i.e.*, the communications services that connect the educational institution to the information services"); Pacific Telesis at 39 ("telecommunications services offered by telecommunications carriers are used for access not only to other telecommunications services but also to information services"); GTE at 93 ("only access to, not the advanced services themselves, is required here"); SBC at 44 ("Commission is to adopt competitively neutral rules 'to enhance . . . access,' not to include and support information services").

Reading Sections 254(h)(1)(B) and (h)(2)(A) together leads to the conclusion that the Joint Board did exactly what Congress intended. Section 254(h)(1)(B) permits a school or library to receive a discount on *any* service (whether telecommunications or information) offered by a telecommunications carrier, including Internet access service. Recognizing that this could create a competitive imbalance with respect to the provision of Internet access service, Congress, in Section 254(h)(2)(A), permitted the Commission to even the playing field through competitively neutral rules. As discussed below, the Joint Board's recommendation that schools and libraries be permitted to choose Internet access service from any provider, not just a telecommunications carrier, falls squarely within this mandate.

**B. The Principle of Competitive Neutrality Does Not Restrict Participation in the Universal Service Discount Program to Carrier-Affiliated ISPs.**

Many carriers argue that permitting Independent ISPs to participate in the universal service discount program, while exempting them from contributing to universal service funding mechanisms, unfairly disadvantages carriers and is not competitively neutral.<sup>5/</sup> The carriers have it backwards. Limiting participation in the universal service discount program to only carrier-affiliated ISPs would, if fact, violate the principle of competitive neutrality and unfairly restrict the choices available to schools and libraries.

Some parties claim that under the Joint Board's recommendation, one group of Internet access providers -- telecommunications carriers -- is obligated to contribute to universal service

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<sup>5/</sup> See, e.g., comments of Ameritech at 18 ("the principle of competitive neutrality would be violated if providers who are not required to contribute to the preservation of universal service were permitted to receive disbursements from the fund"); ALTS at 17 n.11 ("it is not competitively neutral to allow non-carriers to be eligible for Universal Service subsidies unless they are also required to contribute to such subsidies"); BellSouth at 27 ("any determination to include information services . . . would not be competitively neutral"); NYNEX at 40 ("allowing a provider to receive universal service support, without requiring it to contribute to the fund . . . is [not] consistent with the concept of competitive neutrality").

funding, while another group -- Independent ISPs -- is not.<sup>6/</sup> This is incorrect. Under the Recommended Decision, *no* contributions are mandated based upon revenues generated by information services such as Internet access. Instead, carriers are required to make contributions based only on revenues from *telecommunications services*. Therefore, ISPs owned by telecommunications carriers (which would contribute to universal service) are not competitively disadvantaged with respect to Independent ISPs such as AOL (which would not contribute to universal service), since a carrier that provides Internet access service will contribute to the universal service fund on the basis of its telecommunications service revenues, not on the basis of its Internet access service revenues. A carrier that chooses to enter the Internet service business is not thereby disadvantaged, any more than AOL would be disadvantaged if it decided to enter the telecommunications service business.

To the extent that a carrier-affiliated ISP uses the carrier's telecommunications services in the provision of its Internet access service, the price it pays for those telecommunications services will reflect the universal service contribution assessed against those services. Similarly, to the extent that an Independent ISP uses telecommunications services in the provision of its Internet access service -- no matter how it obtains those services -- the price of the telecommunications services will reflect the universal service contribution assessed against those services.

Two examples will illustrate this point. First, if AOL purchases local connections from a LEC, the LEC will contribute to universal service on the basis of its revenues from AOL, and

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<sup>6/</sup> See, e.g., comments of LCI at 3 (recommendation would give information service providers "an inherent cost advantage over competitors"); Netscape at 7 ("[r]equiring only one category of Internet access provider to contribute to the universal service fund while allowing all such providers to receive universal service subsidies, is simply not a competitively or technologically neutral outcome"); Pacific Telesis at 39 ("one type of provider and service would be favored over another").

will pass those contributions along to AOL in the form of higher rates for the local connections. Second, if AOL purchases local connections from a cable company or other competitive local access provider, the 1996 Act defines that competitive provider as a telecommunications carrier as to those access services, and the provider would have to contribute to universal service on the basis of its revenues from AOL.<sup>7/</sup>

## **II. THE COMMISSION SHOULD ELIMINATE ANY RESTRICTION ON CONTENT BUNDLED WITH INTERNET ACCESS, AND IMPLEMENT A FUNDING CAP ON INTERNET ACCESS FEES**

The Joint Board recommended that the discount for schools and libraries not apply to an offering in which Internet access is bundled with more than some "minimal amount of content."<sup>8/</sup> The few parties addressing this issue agree with AOL that the "minimal content" language is unworkable. AOL pointed out in its comments that the Joint Board's "minimal content" language would violate the principle of competitive neutrality by favoring one Internet business model over another, and would interfere with the choices available to schools and libraries.<sup>9/</sup> In a similar vein, GTE states that "all Internet service providers provide 'content services' and efforts to

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<sup>7/</sup> See 47 U.S.C. §§ 153(44) (a telecommunications carrier is *any* provider of telecommunications services, and shall be treated as a common carrier to the extent it provides such services), and 153(46) (a telecommunications service is the offering of telecommunications for a fee to such classes of users as to be effectively available to the public). If AOL is able to purchase its local connections from an entity that is somehow exempted from contributing to universal service, then the carrier-affiliated ISP would be free to even the playing field by taking its local connections from the exempt entity as well, and thus avoid paying universal service contributions on its connections.

<sup>8/</sup> Recommended Decision at ¶ 463.

<sup>9/</sup> See comments of AOL at 5 (the "minimal content" language may effectively preclude schools and libraries from obtaining Internet access from AOL even if AOL offered Internet access *plus* its own content at a more cost-effective rate than its competitors).

distinguish levels of content will only result in arbitrary and potentially discriminatory rules."<sup>10/</sup> Netscape agrees, stating that the "minimal content" approach is essentially ad hoc, and "will be overtaken by market developments."<sup>11/</sup>

In its comments, AOL proposed to replace the "minimal content" language with a cap on Internet access fees, and permit schools and libraries to receive discounts on subscription fees up to the cap.<sup>12/</sup> Although AOL proposed to base the cap on a nationwide average of Internet access fees, it did not specify a methodology for determining this average.<sup>13/</sup>

AOL recommends that the rates of all ISPs (local, regional and national) for monthly, unlimited, dialup service be averaged. This average is computed quarterly by at least one industry clearinghouse using voluntary submissions by more than 3,000 ISPs; the current average is \$19.95 per month.<sup>14/</sup> Alternatively, the Commission could examine the rates charged by the nationwide Internet "backbone" providers -- those who operate the long-haul transport portion of the Internet. Since there are only about a dozen backbone providers,<sup>15/</sup> this information should be readily available to the Commission through industry surveys, studies, or other means.

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<sup>10/</sup> See comments of GTE at 94.

<sup>11/</sup> See comments of Netscape at 5-6 n.19.

<sup>12/</sup> Similarly, BellSouth stated that if the Commission adopts the Joint Board's recommendation to discount non-telecommunications services, it should consider a "double cap" approach under which amounts available for non-telecommunications services (*i.e.*, Internet access and internal connections) would be limited by a separate cap below the overall education cap. Comments of BellSouth at 28.

<sup>13/</sup> Comments of AOL at 7 n.13.

<sup>14/</sup> Boardwatch Magazine Quarterly Directory of Internet Service Providers, Fall 1996 at 102 ("Quarterly ISP Directory"). The average excludes data within the top and bottom 10 percent. *Id.* at 7.

<sup>15/</sup> See Quarterly ISP Directory at 2.

Currently, the four backbone providers with the lowest rates all offer unlimited dialup service on a retail basis for \$19.95 per month.<sup>16/</sup> In addition, the Commission could examine the rates charged by the major online service providers, who collectively generate a significant portion of Internet traffic (AOL alone generates over 35 percent of the traffic on the World Wide Web). By this measure too, the cost of unlimited Internet access is \$19.95 per month.<sup>17/</sup>

Adoption of this proposal will satisfy five important objectives. First, it will fulfill the Joint Board's goal of subsidizing the cost of "basic conduit . . . access from the school or library to the backbone Internet network" because, at present, by nearly every measure, \$19.95 per month is what such "basic conduit" costs.<sup>18/</sup> Second, this proposal will ensure that every school and library will be able to take full advantage of the universal service discount since schools and libraries everywhere have local dialup access to many ISPs offering service at this rate or less.<sup>19/</sup> Third, schools and libraries will be able to choose higher or lower priced ISPs,

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<sup>16/</sup> These Internet backbone providers are BBN Planet (through AT&T), IBM, InternetMCI, and Sprint IP. See Quarterly ISP Directory at 30-31, 59, 68, 94. Note that AT&T and Sprint IP subsequently extended their \$19.95 rate to all customers, not just those who subscribe to their respective long-distance services. See Communications Daily, Dec. 12, 1996 at 10 (AT&T), *id.*, Dec. 5, 1996 at 7 (Sprint IP).

<sup>17/</sup> CompuServe, through its SpryNet subsidiary (800-777-9638) charges \$19.95 per month for unlimited access, as does Prodigy (800-776-3449), Microsoft Network (800-386-5550), and AOL (800-827-6364).

<sup>18/</sup> See Quarterly ISP Directory at 5 ("[t]he average price for a dialup connection is almost exactly \$19.95"). The Commission may wish to review ISP rates on a regular basis -- at least annually or semi-annually -- to ensure that the cap fairly reflects the current rate structure and pricing of Internet access.

<sup>19/</sup> Most schools and libraries can reach any of the nationwide ISPs through a local telephone call. Many of these nationwide ISPs offer, in addition to local dialup numbers in nearly all area codes, a toll-free access number through which access surcharges may apply. Some schools and libraries may not be able to reach one of the nationwide backbone operators without incurring such surcharges. The Commission should include necessary communications surcharges within  
(continued...)



or ISPs that offer educational content, filters, or other features bundled with Internet access that they desire, consistent with the Joint Board's intent to provide them with maximum flexibility in selecting service providers. Fourth, since the Internet access market is highly competitive, no school or library will be required to pay for more than Internet content, and will have every incentive to choose lower rates than the cap for access to Internet content if offered by competitive local providers. Conversely, schools and libraries desiring access to additional high-priced content can subscribe to those bundled content offerings if they are willing to pay for them. Finally, this proposal will be easy to administer.

### **III. THE COMMISSION SHOULD CLARIFY THAT SCHOOLS AND LIBRARIES ARE NOT REQUIRED TO CHOOSE THE LOWEST BIDDER**

Parties addressing the "most cost-effective" provision unanimously support AOL's position that schools and libraries should be able to take into account factors other than price in selecting service providers.<sup>20/</sup> The Commission should clarify that schools and libraries need

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<sup>19/</sup>(...continued)

the charges eligible for discounts as an alternative to a more expensive, and clearly eligible, dedicated line. Such surcharges are analogous to long-distance charges, and AOL agrees with Juno Online Services that long-distance charges should be eligible for discounts. See comments of Juno at 7-8; Recommended Decision at ¶ 464.

<sup>20/</sup> See comments of American Association of Community Colleges at 17 ("[q]uality concerns must be recognized"); Ameritech at 21 ("there may be legitimate non-price reasons for the selection of a higher bid"); BellSouth at 30 ("[b]alance must be allowed in the process to weigh service quality and other pertinent factors"); Commercial Internet Exchange at 8; Education and Library Networks Coalition at 10 n.10 (factors may include "a past record of poor performance"); Nextel at 11-12; iSCAN at 3 ("quality as well as price"); U.S. National Commission on Libraries and Information Science at 3; GTE at 101-02 ("possible trade-offs offered by bidders [is a determination that] [o]nly the individual school or library can efficiently make"); Vermont Department of Libraries at 15 ("each school and library should have flexibility to purchase whatever package . . . it believes will meet its telecommunication service needs most effectively and efficiently"); US West at 47-48 ("a particular school's procurement processes [may] allow it to take into account factors other than price").

not choose the lowest bid (or have the lowest bid automatically chosen for them by the fund administrator), but instead may take into account other factors such as the availability of technical support, the speed, reliability and availability of connections, the value of any proprietary content and user content filters, and a provider's reputation for quality.

Respectfully submitted,

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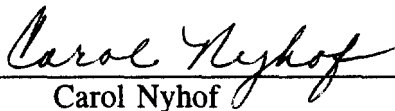
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Dated: January 10, 1997

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Reply Comments of America Online, Inc., was sent by messenger or first-class mail, postage prepaid, on this 10th day of January, 1997 to the Service List for Docket No. 96-45.

  
Carol Nyhof

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